

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

ARTHUR S. APODACA,

Plaintiff,

vs.

JIM SALMONSEN; LYNN FOSTER;  
UNIT MANAGER KAMBIC;  
SERGEANT CHAMBERS; LT.  
HARMON; and A. BOSCH,

Defendants.

CV 22–26–H–BMM–KLD

ORDER ADOPTING  
FINDINGS AND  
RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE

United States Magistrate Judge Kathleen DeSoto entered her Findings and Recommendations in this case on July 22, 2022. (Doc. 12.) Judge DeSoto recommended that Plaintiff Arthur S. Apodaca’s Complaint (Doc. 2) be dismissed without further leave to amend for failure to state a claim on which relief may be granted. (Doc. 12.)

The Court gave Apodaca the opportunity to amend his pleadings to correct his failure to state a claim for relief. (Doc. 9.) Apodaca responded on June 6, 2022. (Doc. 11.) Magistrate Judge DeSoto issued these Findings and Recommendations on July 22, 2022. (Doc. 12.) She determined that Apodaca’s amendments failed to correct the Complaint’s deficiencies. (Doc. 12 at 4.)

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error and finding none, the Court adopts Judge DeSoto’s recommendations in full.

### **ORDER**

Accordingly, **IT IS ORDERED**:

1. Apodaca’s complaint is **DISMISSED** without further leave to amend for failure to state a claim on which relief may be granted.
2. The docket shall reflect that Apodaca’s filing of this action counts as one strike under 28 U.S.C. § 1915(g).
3. The District Court **CERTIFIES** that any appeal from its disposition would not be taken in good faith. The Clerk shall enter, by separate document, a judgment of dismissal.

DATED this 23rd day of August, 2022.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

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Brian Morris, Chief District Judge  
United States District Court